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PHOENIX, ARIZONA

December 21, 1967

DEPARTMENT OF LAW OPINION NO. 68-2 (R-26)

REQUESTED BY: The Honorable Lloyd D. Brumage
PINAL COUNTY ATTORNEY

QUESTION: May the County Recorder refuse to
accept for filing security agreements
in lieu of financing statements from
and after the effective date of the
Uniform Commercial Code?

ANSWER: No.

The Pinal County Recorder has issued the following
notice:

"In accordance with the above, we wish to advise
that effective January 1, 1968, Conditional Sales
Contract and Chattel Mortgage forms now in use
will not be acceptable for recording and if pre-
sented to this office for such purpose will be
returned to the sender without having been
recorded.

"Uniform Commercial Code forms are available from
your regular supplier and must be used subsequent
to January 1, 1968."

The Uniform Commercial Code as adopted in Arizona
will become effective January 1, 1968. A.R.S. § 44-3141
(U.C.C. § 9-402) specifies the formal requisites of the
financing statement. Subsection A provides:

"A financing statement is sufficient if it is
signed by the debtor and the secured party,
designates by typing or printing the names
and mailing addresses of both the debtor

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and the secured party and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, or timber to be cut, or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties." (Emphasis added.)

Thus the Code itself expressly provides that a copy of the security agreement is sufficient as a financing statement, if it is signed by both parties, designates by typing or printing the names and mailing addresses of both the debtor and the secured party, and contains a statement of the types or description of the collateral.

At page 260 of the American Bar Association's Uniform Commercial Code Handbook, it is stated that,

"The statutory form of a financing statement is not mandatory, and other forms may be used if they contain the necessary information."

Harold F. Birnbaum in his American Law Institute booklet entitled "Secured Transactions under the Uniform Commercial Code," states at page 236:

"If filing is required, the secured party has his choice of what to file. He may file a financing statement of the type described

in Section 9-402(3) or he may file a copy of the security agreement."

In an article in 3 Boston B.J. 13, 16, the author states, "A copy of the security agreement may be filed instead of a financing statement, but it must contain all the information that is required of a financing statement."

Professors Hart and Willier in "Bender's Uniform Commercial Code Service," page 9-73, state:

"The Code expressly allows filing a copy of the security agreement as the financing statement if it meets the minimum requisites, as it usually will [sec. 9-402(1)]. The prior Uniform Conditional Sales Act and many chattel mortgage acts required filing the agreement itself, but the 'notice filing' concept of Article 9 does not necessitate that all of the details of the transaction be a matter of public record. As a rule, the shorter financing statement should be filed. A copy of the security agreement would most likely be filed in one of the following instances:

"(1) When it is designed--as some are in a few states (e.g., Wyoming)--to double as a financing statement;

"(2) When the collateral is complex or of several varieties about which third parties should have no doubts;

"(3) When the obligations secured are complex and it is desirable to put third persons on notice;

"(4) When separate financing statements were not or cannot conveniently be executed;

"(5) When the transaction with the debtor does not involve changes in obligations or collateral (e.g., a conditional sale of an appliance as opposed to a security interest in shifting accounts or inventory) if this procedure becomes customary in a filing district."

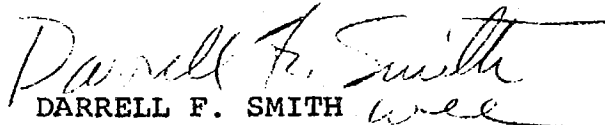
The Supreme Court of New Mexico in Strevell-Paterson Finance Co. v. May, 77 N.M. 331, 422 P.2d 366, 368, held:

"The fact that an agreement offered for filing is denominated a 'chattel mortgage' is immaterial. The traditional forms of security agreements in use before the enactment of § 50A-9-203, NMSA 1953 and § 50A-9-402, supra, may continue to be used after their enactment. Uniform Commercial Code § 9-101, comment 2. . . . It is clear that the old form chattel mortgage meets the definition of a 'security agreement.' § 50A-9-402(1), supra, specifically provides that a copy of the security agreement is sufficient as a financing statement if it is signed by the debtor and secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items of collateral. Thus, an instrument denominated as a 'chattel mortgage' may be filed as a financing statement so long as it contains the necessary information. Ops. N.M. Atty. Gen. 62-2, Jan. 3, 1962."

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The conclusion seems inescapable that a security agreement meeting the requirements of a financing statement may be filed with the county recorder, or the Secretary of State, as the case may be, to perfect the secured party's security interest.

Respectfully submitted,


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The Attorney General

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